(2023) 02 NCLT CK 0044

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 157/ KB /2022 Connected with Company Application (CAA) No. 72/ KB /2022

Maa Naina Devi Papers Private Limited Vs

Date of Decision : 21-02-2023

Acts Referred:

Companies Act, 2013 — Section 133, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 230(1), 230(6), 232, 232(1), 232(3)(i)

Citation : (2023) 02 NCLT CK 0044

Hon'ble Judges : Bidisha Banerjee, Member (J);Balraj Joshi, Member (T)

Bench : Division Bench

Advocate : Gopal Kumar Khetan, Harihara Sahoo

Final Decision : Disposed Of

Judgement

Bidisha Banerjee (Judicial):

1. This Court is convened through hybrid mode.

2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (hereinafter referred as “Act”) for sanction of the Scheme of Arrangement of Maa Naina Devi Papers Private Limited, being the Petitioner No. 1 above named (“Demerged Company” or “Petitioner No. 1”) and Pehr Ventures Private Limited, being the Petitioner No. 2 above named (“Resulting Company” or “Petitioner No. 2”) and their respective shareholders and creditors. The Scheme provides for the demerger from the Appointed Date, viz. 01st day of April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Arrangement for Demerger.

S N

NAME OF THE COMPANY

COMPANY AS PER THE SCHEME

PARTY TYPE

RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY

PETITION

Appointed Date: 01st April, 2021

I.

Maa Naina Devi Papers Private

Limited

Demerged Company

Petitioner No. 1

Scheme of Arrangement is

annexed to the

II.

Pehr Ventures Private Limited

Resulting Company

Petitioner No. 2

Company Petition being – Annexure –A, at Page No 19-39

3. The Petition has now come up for final hearing. The Counsel for the Petitioners submits as follows:

(a) The Scheme was approved unanimously by the respective Board of Directors of the Applicant Companies at their meetings held on the 07th day of March, 2022.

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are inter alia as follows: -

i. The Demerged Company and Resulting Company are engaged in different kind of business.

ii. The Scheme of Arrangement for Demerger has been proposed to concentrate on the business to create a more competitive business both in terms of scale and operations. The Resulting Company would develop combined long term corporate strategies and financial policies, thus enabling better management and accelerate growth of the business.

iii. The said Scheme provide scope for independent collaboration, consolidation and expansion of activities of the respective undertaking of the Demerged Company.

iv. The said Scheme leads to better flexibility in accessing capital, focused strategy and specialization for sustained growth.

v. The Scheme of Arrangement for Demerger will enable the Demerged Company for creating value for all stakeholders including the shareholders.

(c) The Statutory Auditors of the Demerged Company and the Resulting

Company have by their certificates dated 21st day of March, 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

(d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.

(e) The exchange ratio of shares in consideration of the demerger has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Vikash Goel, Registered Valuer.

(f) The shares of none of the Petitioner Companies are listed on any Stock Exchange(s).

(g) By an order dated 13th day of July, 2022 in Company Application (CAA) No. 72/KB/2022, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with

a) Meetings dispensed: Meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors/ Liability Holders of Applicant Company No. 1 and Meetings of Equity Shareholders and Unsecured Creditors/ Liability Holders of the Applicant Company No.2 are dispensed with under section 230(1) read with section 232(1) of the Act in view of all such Equity Shareholders, Secured Creditors and Unsecured Creditors/ Liability Holders having respectively given their consent to the Scheme by way of affidavits.

b) Meetings to be held: No meeting is required to be held.

(h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an Order dated 30th November, 2022, the instant petition was admitted by this Tribunal and fixed for hearing on the 16th day of February, 2023 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of the date of hearing. In compliance with the said order, the Petitioners have duly served such notices on the:

SL.

NO.

NAME OF THE STATUTORY AUTHORITY

MODE & DATE OF SERVICE

REFERENCE TO PAGE NUMBER

HAND DELIVERY/SPEED

POST

EMAIL

1.

The Regional Director,

Eastern Region, Kolkata

08-12-2022

16-12-2022

Page No. 1- 4

(Affidavit of service)

2.

The Registrar of Companies, West

Bengal

08-12-2022

16-12-2022

Page No. 5-8 (Affidavit of

service)

3.

The Official

Liquidator, High Court, Calcutta

08-12-2022

16-12-2022

Page No. 9-12

(Affidavit of service)

4.

Income Tax Officer having jurisdiction over Circle 1 and Ward

1(1), Siliguri

08-12-2022

16-12-2022

Page No. 13 - 20

(Affidavit of

service)

5.

The Chief

Commissioner of Income Tax, Kolkata -

02

08-12-2022

16-12-2022

Page No. 21 - 24

(Affidavit of

service)

(i) The Petitioners have also published advertisements in two newspapers viz. "Financial Express" and "Aajkaal" on 20-12-2022. An affidavit of service in this regard has also been filed by them on 30-12-2022.

(j) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

4. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata have filed its representations before this Tribunal.

5. The Official Liquidator has also filed a Report dated January 11, 2023 wherein it has been stated that

" on the basis of the information submitted by the Petitioners Companies, the Official Liquidator is of the view that the affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interests of its members or to public interest as per the provisions of the Companies Act, 2013".

6. Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), Kolkata vide his affidavit filed on January 05, 2023 has reported certain observations in respect whereof the Petitioner Companies have filed their rejoinder dated January 06, 2023. The said observations and the reply thereof is given underneath: -

Paragraph 2(a) of the Regional Director's Affidavit:

It is submitted that as per available records, it appears that no complaint and/ or representation has been received against the proposed scheme of Amalgamation. Further all the Petitioner Companies are also up-dated in filing their Financial Statements and Annual Returns for the financial year 31/03/2022.

Paragraph 3(a) of the Rejoinder:

Since the statements made in Para 2(a) of the Regional Director's affidavit are general statements, hence no comments are required to the said statements.

Paragraph 2(b) of the Regional Director's Affidavit:

The Petitioner Companies should provide list/details of Assets, to be demerged/ transferred from the Demerged Undertaking/Company to the Resulting/ Transferee Company upon sanctioning of the proposed scheme.

Paragraph 3(b) of the Rejoinder:

The list/ details of Assets to be demerged/transferred from the Demerged Undertaking/ Company to the Resulting/Transferee Company upon sanctioning of the proposed Scheme of Arrangement (Demerger) is enclosed with the Rejoinder.

Paragraph 2(c) of the Regional Director's Affidavit:

The Petitioner Companies should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation

Paragraph 3(c) of the Rejoinder:

The Petitioner Companies undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

Paragraph 2(d) of the Regional Director's Affidavit:

That the Resulting/Transferee Company should be directed to pay the applicable stamp duty, if any, on the demerged/transfer of the immovable properties from the Demerged Company to it.

Paragraph 3(d) of the Rejoinder:

The Petitioners states that the Resulting/Transferee Company shall, if applicable, pay the applicable stamp duty on demerged/transfer of the immovable properties from the Demerged Company to it.

Paragraph 2(e) of the Regional Director's Affidavit:

The Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 3(e) of the Rejoinder:

The Petitioners states that the Scheme enclosed to the Company Application and Company Petition are one and the same and that there is no discrepancy and no change is made.

7. Heard submissions made by the Ld. Counsel appearing for the Petitioner, Authorized Person from the office of the Regional Director, MCA. Upon perusing

the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -

(a) The Scheme of Arrangement for Demerger mentioned in Paragraph 1 of the Petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from 01st April, 2021 ("Appointed Date") on MAA NAINA DEVI PAPERS PRIVATE LIMITED, being the Petitioner No. 1 above named ("Demerged Company" or "Petitioner No. 1") and PEHR VENTURES PRIVATE LIMITED, being the Petitioner No. 2 above named ("Resulting Company" or "Petitioner No. 2") and their respective shareholders and creditors and all concerned;

DEMERGED COMPANY

RESULTING COMPANY

APPOINTED AND EFFECTIVE DATE: 01st April, 2021

MAA NAINA DEVI PAPERS

PRIVATE LIMITED

PEHR VENTURES PRIVATE LIMITED

(b) All the property, rights and interest of Goods and Grain Division of the DEMERGED COMPANY be transferred to and vested in without further act or deed in Pehr Ventures Private Limited, being the RESULTING COMPANY, pursuant to the provisions Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

(c) All debts, liabilities, duties and obligations in relation to Goods and Grain Division of the Demerged Company be transferred to without any further act or deed to Pehr Ventures Private Limited, being the Resulting Company, pursuant to the provisions of Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

(d) All proceedings and/or suits and/or appeals now pending by or against the Demerged Company be continued by or against the Resulting Company, as provided in the Scheme;

(e) With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/appeals of whatsoever nature by or against the Transferor Companies pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company. Any compounding/penalties/liabilities/taxes required to be done on behalf of the Transferor Companies for any violation of the Companies' Act shall be the responsibility of the Transferee Company. The Transferee Company shall also preserve the necessary records in respect of any such pending proceedings, at least till the culmination of such proceedings.

(f) All the workmen and employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme. All the obligations/ liabilities of the Transferor Companies with regard to their workmen and employees shall be the responsibilities of the Transferee Company;

(g) The Resulting Company do without further application issue and allot to the shareholders of the Demerged Company, the shares in the Resulting Company to which they are entitled in terms of the Scheme;

(h) Leave is granted to the Petitioners to file the Schedule of Assets & liabilities of the Resulting Company in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

(i) The Demerged Company and the Resulting Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration.(Effective date)

(j) In case of any default, including in provisions of income tax in respect of transferred companies, the income tax department, the ROC-West Bengal, and all others statutory departments/authorities shall be at liberty to initiate appropriate proceedings against the transferee company which after the sanction of the scheme by this tribunal is in any case shall be responsible for the liabilities/ non-compliances of the transferee companies as well. The transferee company shall preserve the relevant records of the transferor companies in this regard.

(k) Any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary.

7. The Petitioners shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, after verification, to the certified copy of the order.

8. Hence, the Company Petition (CAA) No. 157/KB/2022 connected with Company Application (CAA) No. 72/ KB /2022 is disposed of accordingly.

9. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

